STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 29, 2008
v	No. 275577 Midland Circuit Court
RICHARD LEEROY COOPER, Defendant-Appellant.	LC No. 01-009822-FH

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right[1] his jury trial convictions for felonious assault, MCL 750.82, resisting and obstructing a police officer, MCL 750.479, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. This case stems from a police response to a 911 call on February 27, 2001. Because the trial court properly denied defendant's motion to suppress, we affirm. This case is being decided without oral argument under MCR 7.214(E).

Responding to a 911 call from defendant's residence indicating that someone in the home had been injured when a meat grinder fell on the person's head, officers met a woman at the door who indicated that the injured man, defendant, was inside. The woman told the officers that defendant had only cut his hand. Defendant was in the shower, and when he came out after a request was made by a doctor/deputy who had responded to the scene, defendant walked quickly to a bedroom without being examined by the doctor. Soon thereafter, the officers heard from the bedroom the sound of a shotgun breeching. The officers entered the bedroom and encountered defendant holding a shotgun. Defendant was seized and the gun confiscated.

Defendant's sole argument on appeal is that the trial court erred in denying his motion to suppress all the physical evidence seized from his home. Defendant argues that the officers illegally entered and remained inside his home. We review a trial court's findings of fact on a

[1] This Court reinstated defendant's appeal as of right on January 17, 2007 pursuant to the grant of a writ of habeas corpus by the United States District Court, Eastern District of Michigan, US DC No. 04-CV-74790-DT.

motion to suppress evidence for clear error, but review de novo the ultimate decision. *People v Galloway*, 259 Mich App 634, 638; 675 NW2d 883 (2003).

Police generally must have probable cause to search and a warrant based thereon to search for evidence of a crime in a dwelling. *People v Davis*, 442 Mich 1, 10; 497 NW2d 910 (1993). Police must show that they had a warrant, or that an exception applies, in order for a search to be legal. *Id*. It is undisputed that there was no search warrant or arrest warrant in this case. Accordingly, for the police to have entered and remained in defendant's home lawfully, an exception must apply.

Defendant argues specifically that the trial court erred at the motion hearing when it found that the emergency aid exception applied to the facts of this case. The emergency aid exception and the community caretaker exception are both recognized in Michigan law. *Davis*, *supra* at 11. Entering a private dwelling to give aid to someone in need falls under both exceptions. *Id*. at 20, 23. However, in cases where the police are investigating based on a reasonable belief that someone needs immediate aid, the emergency aid exception governs. *Id*. at 25. First, defendant's argument that the police did not have probable cause fails because the emergency aid doctrine does not require probable cause. *Id*. at 11-12. The doctrine requires only that the police possess a reasonable belief that a person is in need of immediate aid before entering a dwelling. *Id*. at 20.

Defendant also argues that the police did not have reason to believe that anyone in the home was in need of emergency aid. In so doing, the trial court accepted the testimony of the testifying officers to the extent it differed from the woman at the residence who answered the door. We give deference to that factual determination, based as it is on the credibility of the testifying witnesses. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 4503 (1983). As the trial court found, the evidence showed that the responding officers had received a dispatch indicating someone had a meat grinder fall on his or her head, followed by a dispatch that the injury might involve a fight. Further, there was testimony by one of the officers that he had to knock on the front door more than normal before the door was answered. The evidence also showed that the woman who answered the door appeared hysterical, flustered, shaky, crying and with a cut on her cheek. When questioned, the woman responded that there was no fight and that no one had a head injury. She also stated that the party whose hand had been injured was in the shower. There was also testimony from the preliminary examination that one of the officers saw blood on the woman's shirt and on the floor in the house.[2] In light of the evidence in the record and the trial court's assessment of witness testimony, the trial court did not clearly err in finding that the police were legally justified to enter the home without a warrant under the emergency aid exception.

Defendant also argues that even if the police were justified in entering the home, they had no justification to remain and had a duty to leave the home once they discovered that no one

[2] A court's decision to take judicial notice is discretionary. MRE 201(c). The trial court may take judicial notice of the court files and records including the facts contained in the preliminary examination. *Knowlton v Port Huron*, 355 Mich. 448, 452; 94 NW2d 824 (1959).

needed emergency aid. Defendant provides no specific authority that the police were required to leave, but appears to rely on the holding in *Davis* that a warrantless entry made on the basis of emergency aid must be limited to doing only that which is "reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance." *Davis, supra* at 26. Defendant's argument here rests on the assertion that it was definitively established soon after the entry into the residence that no one was in need of emergency aid. However, defendant does not cite any supporting evidence for this proposition. "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007). In any event, defendant's assertion is belied by the record, which indicates that the officers stayed only long enough to ascertain the extent of defendant's injuries. The officers' wait in the hall outside the bathroom and bedroom for defendant to emerge was both reasonable and necessary for the purposes of determining whether defendant needed emergency assistance. *Davis, supra* at 26.

Affirmed.

/s/ Richard A. Bandstra
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto